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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,959	12/21/2001	Andrew Mark Player	applied 105	7490
29397	7590	04/21/2005	EXAMINER	
LAW OFFICE OF GERALD MALISZEWSKI P.O. BOX 270829 SAN DIEGO, CA 92198-2829			ABRAHAM, ESAW T	
			ART UNIT	PAPER NUMBER
			2133	
DATE MAILED: 04/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/037,959	PLAYER ET AL.
	Examiner Esaw T. Abraham	Art Unit 2133

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 December 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 12 is/are rejected.  
 7) Claim(s) 2-11 and 13-22 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 21 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Response to the Appeal Brief Amendment**

Applicant's arguments, see pages 1-17 in the Appeal brief, filed on 12/23/04, with respect to the rejection(s) of claim(s) 1-22 under 35 U.S.C. 103(a) as being unpatentable over Yamazaki et al. (U.S. PN: 6,487,686) have been fully considered and are persuasive. Therefore, the **finality** of the action has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Mizuochi et al. (U.S. PN: 6,801,720).

### **DETAILED ACTION**

1. Claims **1-22** are presented for examination.

#### *Drawings*

2 a) New corrected drawings for drawings 1-4 in compliance with 37 CFR 1.121(d) are required in this application because the drawings **lack formal drawings**. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

b) Drawing 1 is objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "104" and "106" have both been used to designate forward error correction decoder (see page 6, lines 5 and 7 of the specification). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each

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drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

c) Drawing 1 is objected to because the reference character "100" and "102" are referring to the same block (see figure 1 elements 100 and 102) and further the reference characters ("100" and "102") are not clear if they are referring to the alarm generation system or to the processor. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere CO.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuochi et al. (U.S. PN: 6,801,720) .

As per claims 1 and 12:

Mizuochi et al. teach or disclose an optical communication system, and more particularly to an optical signal quality supervisory device that supervises the quality of a light wave network (see col. 1 lines 11-14). Further, Mizuochi et al. in figure 15 teach an optical supervisory channel receiver in an optical signal quality supervisory device comprising an FEC decoding circuit (81), an error detection circuit (82), a detected error (83), an overhead extraction circuit (84) and a system alarm transfer byte output from the extraction circuit (85). Furthermore, the FEC decoding circuit (81), the error detection circuit (82) and the overhead extraction circuit (84) constitute the error detecting means that conducts the error detection when the forward error correction is decoded (see col. 11, lines 44-57). Mizuochi et al. do not explicitly teach the optical communication system is connected to G.709 standard. However, such CCITT recommendations G707, G708 and G709 are known in the art of optical communication network or commonly defined by most of optical communication systems. Therefore, it would have been

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obvious to a person having an ordinary skill in the art at the time the invention was made to include the G.709 specification in the system Mizuochi et al. **This modification** would have been obvious because a person having ordinary skill in the art would have been motivated in order to employ a protocol or a specification (G.709) since the protocol is conventional and well known to the optical communication system

#### **Allowable subject matter**

4. Claims **2-11 and 13-22** are objected to as being dependent upon a rejected base claim but would be allowable if rewritten independent from including all of the limitation of the base claim and any intervening claims.

The claimed invention comprises the method wherein using the forward error correction bytes (data) to detect errors in the messages includes detecting a first number of errors and wherein generating alarm signals in response to the detected errors includes generating a signal degrade (SD) signal in response to the first number of errors (**as in claim 2**) which the prior art do not teach or render obvious.

Claims **3-11**, which are directly or indirectly dependents of claim 2 are also objected.

The claimed invention comprises the system wherein using the forward error correction decoder detect a first number of errors and wherein the alarm circuit generates a signal degrade (SD) signal in response to the first number of errors (**as in claim 13**) which the prior art do not teach or render obvious.

Claims **14-22**, which are directly or indirectly dependents of claim 2 are also objected.

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### Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US PN: 6,690,884 Kelty et al.

US PN: 6,452,906 Afferton et al.

6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Esaw Abraham whose telephone number is (571) 272-3812. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are successful, the examiner's supervisor, Albert DeCady can be reached on (571) 272-3819. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for after final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

*Esaw Abraham*  
Esaw Abraham

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*ALBERT DECADY*  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY SEARCH UNIT